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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,214	06/02/2000	Thorsten Ott	10191/1431	8054
26646	7590	11/15/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			HERNANDEZ, OLGA	
		ART UNIT	PAPER NUMBER	
		2144		

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/586,214	OTT ET AL.	
	Examiner	Art Unit	
	Olga Hernandez	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 9/13/04.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2 and 8 is/are rejected.
- 7) Claim(s) 3-7,9 and 10 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 9/13/04 have been fully considered but they are not persuasive. The applicant has amended claim 1 to add the limitation of: "by using an arrangement for detecting the descent of the vehicle." Sigl teaches when driving downhill grades, the adjusted speed is exceeded (column 3, lines 20-35). The prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification.

Kemco Sales, Inc. v. Control Papers Co., 208 F.3d 1352, 54 USPQ2d 1308 (Fed. Cir. 2000).

Further, a reference which is silent about a claimed invention's features (arrangement of for detecting the descent of the vehicle) is inherently anticipatory if the missing feature is necessarily present in that which is described in the reference. The applicant argues that Sigl does not teach calculating at least one manipulated variable based on the actual speed and the setpoint speed only when the vehicle is driving on the descent. The examiner disagrees. It is clear that the calculated variable are shown in (figures 1 and 2) the flow-chart shows manipulation of the acceleration/deceleration in conjunction with other variables. Indeed, the examiner agrees with the applicant regarding that detecting whether the vehicle is traveling on a descent is accomplished by a computation based on different factors, which Sigl teaches in figure 2 the deceleration that is achieved by the control unit 10 when the vehicle is driving downhill grades.

Further, the applicant specifies in his arguments that Sigl is "a condition occur" and it is not an affirmative recognition of a condition. However, Sigl specifies, "when driving on downhill grades, it can happen that the speed is no longer able to maintain through an

intervention in the engine output, as this intervention has already been completely exhausted[.]” (column 3, lines 30-35), in which the vehicle traveling downhill has to occur before the hill can be detected by the engine output via the control unit 10. If there is no occurrence, how can it be detected? A “condition occur” triggering a reaction of different components in the vehicle such as reducing the engine output to a minimal value (column 3, lines 20-25), the control unit activated to intervene in a brake (column 3, lines 47-48). Even in applicant’s invention, the vehicle has to travel on a hill before it is detected. Moreover, alleging that Sigl does not *always* adjust the exceeded speed on downhill grades does not provide support enough for patentability, because applicant’s invention is not claiming that matter. An invention is useful although it is inoperable to achieve its intended result under all operating conditions. Inutility requires a showing of total inoperability (Sigl’s intervention in a braking device carried out as a function of the difference between the setpoint and the actual speed and leads to the braking device being influenced to adhere to the setpoint speed through the actual speed [happening when the vehicle is going downhill]). Envitech Corp. v. Al George, Inc., 221 USPQ 473 (Fed. Cir. 1984).

Regarding claim 2, Sigl teaches at least that one manipulated variable is calculated only when one switch is activated (when it turns on/off the cruise control -column 3, lines 7-11).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by Sigl (5,794,735).

As per claims 1 and 8, Sigl teaches how to:

- determine the actual speed of the vehicle (column 3, lines 18-20);
- predefine a set-point speed (column 4, lines 15-20);
- detect whether the vehicle is traveling on a descent (column 3, lines 20-23);
- calculate at least one manipulated variable based on the actual speed and the set-point speed only when the vehicle is detected as traveling on a descent (column 3, lines 22-26); and
- influence the actual speed of the vehicle on the basis of the at least one manipulated variable (column 3, lines 1-67 and column 4, lines 1-2).

Sigl performs some functions when the vehicle is traveling on a downhill. The vehicle speed exceeds preset limit after an intervention in an engine output (i.e. fuel cut off) this detects when the car goes downhill (column 3, lines 32-36) manipulated variables are applying the brakes (col. 3, ln 46-49, 55-59). It would have been obvious to one skill in the art that the omission of an element and its function in a combination where the remaining elements perform the same functions involves only routine skill in the art. In re Karlson, 136 USPQ 184.

As per claim 2, Sigl teaches at least that one manipulated variable is calculated only when one switch is activated (when it turns on the cruise control -column 3, lines 7-11).

Allowable Subject Matter

Claims 3-7, 9, 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

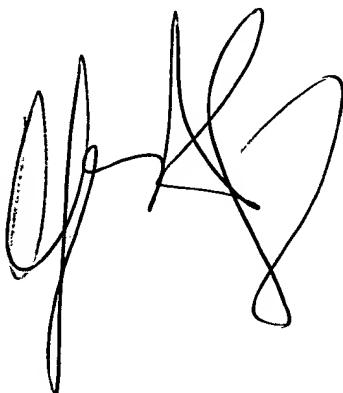
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Hernandez whose telephone number is (703) 305-0918. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Olga Hernandez
Examiner
Art Unit 2144



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